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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/713,744	11/15/2000	Thomas P. Quigley	61300/221	2947

26371 7590 06/17/2003

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EXAMINER

SHAPIRO, JEFFERY A

ART UNIT

PAPER NUMBER

3653

DATE MAILED: 06/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/713,744

Applicant(s)

QUIGLEY ET AL.

Examiner

Jeffrey A. Shapiro

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION:

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skalla et al discloses the concrete transport vehicle and chute assembly as follows.

As described in Claims 1, 11 and 20;

1. a chassis having a front end and a rear end; (see col. 1, lines 10-15 of Skalla et al, which recites that the chute is for a "concrete truck". Note also that US 4,054,194 to Davis and US 5,244,069 to Cosgrove, previously cited by Applicants, are referred to in col. 10, lines 26-29 of Skalla et al as having concrete chutes attached to concrete trucks, and each of these references show said concrete truck referred to in the present Claims 1, 11 and 20.)
2. a mixing drum supported by the chassis, the drum having a first end and a second end and an opening in communication with a discharge hopper and a main chute (see above);
3. a pedestal extending between the chassis and one end of the drum to support that end of the drum (note that it is inherent that a support must be provided for said drum—also, see above);
4. a cab enclosure supported by the chassis (note that it is inherent that there be a cab on said chassis—see above);

5. an extension chute (14 and 16) operatively aligned with the main chute (12), the extension chute comprising a chute assembly (see Claim 1, col. 4, lines 9-11);
6. a chute assembly comprising as follows;
 - a. a frame (12, 14 and 16) having a first end and a second end, each end including an arcuate end angle member (14 and 16) maintained in a spaced apart relationship by a pair of chute rails (12) attached to each end angled member;
 - b. a chute skin (10) mounted within the frame and attached to each chute rail and each end angle member, wherein the chute assembly defines a longitudinally elongated concave chute;
 - c. a removable liner (18) mounted within the chute assembly adjacent to the chute skin;

As described in Claim 2;

7. the mixing drum is configured to discharge concrete from an end (note that concrete trucks inherently have a discharge opening from which the concrete is extracted or poured);

As described in Claims 3, 12 and 20;

8. a hook (28) mounted on each chute rail (12) proximate the second end of the chute assembly and a bracket assembly (34) mounted on each chute rail proximate the first end of the chute assembly (see figure 1);

As described in Claims 4, 13 and 20;

9. the chute rails mounted on the chute are configured to releasably engage and support the liner (see col. 2, lines 48-50);

As described in Claims 5, 14 and 23;

10. the liner is composed of plastic (see col. 2, lines 50-52);

As described in Claims 6, 15 and 22;

11. the frame and chute skin are composed of aluminum (see col. 2, lines 52-67);

As described in Claims 7 and 16;

12. an elongated channel (22) attached to each end angle member and to the chute skin (see figure 1);

As described in Claims 8 and 17;

13. the elongated channel is composed of aluminum (see col. 2, lines 65-67);

As described in Claims 9, 18, 20 and 21;

14. the chute rails (12) are each configured, in conjunction with a liner flange (20) (see figure 3), to form a liner pocket to receive the liner and removably retain the liner within the extension chute;

As described in Claim 10;

15. the chute rail (12) and the liner flange (20) are composed of the same material and forms a single, integral member (see col. 2, lines 48-55);

Response to Arguments

3. Applicant's arguments filed 3/27/03 have been fully considered but they are not persuasive.

Affidavit Under 37 C.F.R. Sec. 1.131

4. The Affidavit and Declaration filed on 3/27/03 under 37 CFR 1.131 has been considered but is ineffective to overcome the prior art reference, US 6,367,606 B1.

The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the prior art reference.

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the prior art reference to either a constructive reduction to practice or an actual reduction to practice.

The evidence submitted is insufficient to establish applicant's alleged actual reduction to practice of the invention in this country or a NAFTA or WTO member country after the effective date of the prior art reference.

The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the prior art reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

Applicants assert that prior to 10/15/99, "the idea of a concrete transport vehicle, exterior concrete chute and method for reducing wear of an extension concrete chute."

This statement in and of itself is not considered to provide sufficient evidence supporting overcoming the prior art cited.

Applicants assert that prior to 10/15/99, drawings of several designs of lines chutes to be made at Oshkosh Truck Corporation that incorporated the concepts described and claimed, as shown in Exhibit A.

It appears that these drawings are not as extensive as the drawings submitted in the Application by Applicants. If there were changes to the drawings between the time of the originally commissioned drawings of Exhibit A and the time of filing, what were these changes and why were they made, and what evidence is there that such changes were made (including temporal evidence).

Applicants assert that prior to 10/15/99, plastic material was ordered for the liner tests from Horn Plastics, Inc., through Color & Custom, Inc., as shown in Exhibit B. However, there still is no evidence in Exhibit B as to what exactly was done with this material. This evidence appears to prove in part the existence of due diligence, but does not overwhelmingly establish this.

Applicants assert that prior to 10/15/99, aluminum castings for chutes from Northern Aluminum Foundry Co., as shown in Exhibit C. However, again, what was done with this material and a timeline on such information is not provided. Again This evidence appears to prove in part the existence of due diligence, but does not overwhelmingly establish this.

Applicants assert that prior to 10/15/99, tests were conducted on several chute designs, as outlined in Exhibits D-G. Abrasion resistance tests were also conducted, as described in Exhibits G and H. However, it appears that there is no information regarding any changes made to the design and the prototypes based on said tests and if so, how are the chute described in the claims and the drawings of the instant application different than the prototypes tested.

As these questions remain, and the evidence presented in the Affidavit, taken either individually or as a whole, do not comprise sufficient evidence of conception, due diligence or reduction to practice, the date of the prior art reference US 6,367,606 B1 is considered still valid, and the rejection under 35. USC Sec. 103 (a) is maintained.

Conclusion

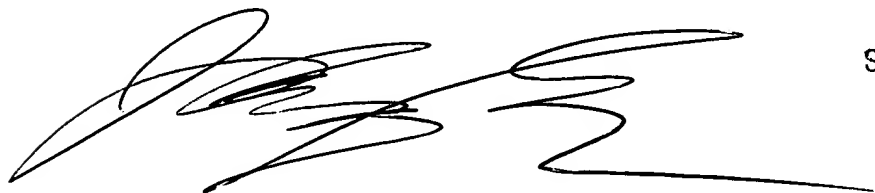
1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

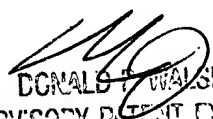
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (703)308-3423. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald P. Walsh can be reached on (703)306-4173. The fax phone numbers for the organization where this application or proceeding is assigned are (703)306-4195 for regular communications and (703)306-4195 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.



Jeffrey A. Shapiro
Patent Examiner,
Art Unit 3653



DONALD P. WALSH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2101

June 16, 2003